In The High Court of Uttaranchal, at

Nainital.

Criminal Misc. Application No. 703/2006

Shyam Prakash Sharma S/o Late Gurdayal
Sharma, Proprietor of M/s Prayag Medical Store
Kashipur, District U.S. Nagar ... Applicant.

Vs.

1- State of Uttaranchal through Chief
Secretary to Govt. of Uttaranchal,
Dehradun.

2. Pramod Kumar S/o Phool Singh
R/o Avas Vikas, Kashipur,
District U.S. Nagar ..... Respondents.

Sri Jagdish Prasad, learned counsel for the petitioner.
Sri A. Rab, learned Addl. G.A. assisted by Sri M.C. Joshi, learned Brief Holder for the State.

Hon'ble B.C. Kandpal, J.

By way of this petition, U/S 482 Cr.P.C. the relief has been sought for quashing the proceedings of Criminal Case No. 1386 of 2005, Pramod Kumar Vs. Managing Director, Medley Pharmaceutical Ltd. East Bombay and others, U/Ss 274, 275, 420 I.P.C., pending in the Court of Judicial Magistrate, Ist Class, Kashipur (now A.C.J.M.).

2- Brief facts of the case are that a complaint was filed by the complainant Pramod Kumar against Managing Director, Medley Pharmaceutical Ltd. East Bombay and others (including the petitioner, who is the proprietor of Prayag Medical Store, Shiv Complex, Kashipur, District Udham Singh Nagar). The facts mentioned in the complainant are that a syrup medicine NOXYGYL

contained in the bottle, was purchased from the shop of Paliwal Medical Store, who is a retailer. The petitioner is the wholesale dealer who has sold the medicine in question to the retailer, i.e. Paliwal Medical Store. The complainant found a cockroach inside the bottle of the medicine and informed about this fact to the retailer as well as the wholesaler. The complainant thereafter lodged the complaint and in support of his complaint got his statement recorded U/S 200 Cr.P.C.

3- The Trial Court after having perused the material placed before it, was pleased to record the finding that there was a *prima facie* case to proceed against the petitioner. Accordingly the trial court issued notice to the petitioner for facing the trial U/Ss 274, 275, 420 I.P.C.

4- The petitioner by way of this petition has challenged the summoning order as well as prayed for quashing the entire proceedings of the criminal case pending against him.

5- Learned counsel for the petitioner has argued that without sending the sample of the medicine in question to the Government Analyst for analysis, it cannot be presumed that the purchased medicine was adulterated.

6- I do not find any force in the arguments advanced by the learned counsel for the petitioner at this stage. It is for the trial Judge to assess and consider this aspect. The trial Judge found a prima facie case to proceed against the petitioner and accordingly passed the order for summoning the petitioner to face the trial. The averments made by the petitioner in the petition relate to the disputed question of fact, which cannot be assessed and judged by me at this stage. Any judgment rendered

by me would amount to a premature judgment, because the evidence is still to be adduced before the trial Judge, who has to reach to a definite conclusion after the proper assessment of the evidence.

7- I do not find any abuse of process of court at this stage.

8- The petition lacks merit and is liable to be dismissed.

9- Accordingly the petition is dismissed.

10- However, it is open for the petitioner to raise this objection before the trial Judge as to whether the purchased medicine by the complainant from the retailer is adulterated or not. The trial Judge after considering the arguments advanced by the learned counsel for the parties in this regard and examining the evidence on record, shall decide the same in accordance with law.

(B.C. Kandpal, J.)

Dated: 30-08-2006
ISB